

**United States Department of Labor
Employees' Compensation Appeals Board**

E.P., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA, Employer**

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**Docket No. 07-55
Issued: March 27, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 3, 2006 appellant filed a timely appeal from the September 29, 2006 nonmerit decision of the Office of Workers' Compensation Programs, which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's September 22, 2006 request for reconsideration.

FACTUAL HISTORY

On the prior appeal,¹ the Board found that the Office properly denied appellant's December 13, 2005 request for reconsideration. The request was untimely and did not show on

¹ Docket No. 06-875 (issued September 8, 2006).

its face that the most recent decision on the merits of his case was clearly erroneous. The facts of this case as set forth in prior Board decisions are hereby incorporated by reference.

On September 22, 2006 appellant requested reconsideration for compensation from July 1988 to present. He disagreed with the Office's review of the medical evidence, accused the Office of bias and prejudice, alleged that it committed error and used poor judgment to find that he did not file in a timely manner. Appellant also suggested that the Office had the burden to consult with a doctor who was expert in the field of mental illness. He asked the Office not to bring up "timely filing of 1991 that is not the issue." The issue, appellant stated, was whether his illness handicapped him and whether he was entitled to be compensated for his injury.

In a decision dated September 29, 2006, the Office denied appellant's request for reconsideration. The Office found that appellant's request was untimely and failed to show clear evidence of error.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act does not grant a claimant the right to a merit review of his case.² Rather, this section vests the Office with discretionary authority to review prior decisions:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."³

The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). Section 10.607 provides that an application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. This section further provides that the Office will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of the Office in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.⁴

² *Gregory Griffin*, 41 ECAB 186 (1989); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607 (1999).

ANALYSIS

This is appellant's seventh appeal to the Board.⁵ He seeks reconsideration of the March 15, 1991 decision which denied his recurrence of disability claim. The most recent merit decision denying his entitlement to compensation came on March 15, 1991, when the Office denied his claim that he sustained a recurrence of disability on July 3, 1989 as a result of his July 14, 1988 employment injury.⁶ Appellant continues to disagree with the denial of compensation, but the one-year period for requesting reconsideration expired no later than March 15, 1992. The Board, therefore, finds that his September 22, 2006 request for reconsideration is untimely.

The Board further finds that appellant's request for reconsideration fails to demonstrate clear evidence of error. The request does not show on its face that the Office's denial of compensation was erroneous. Appellant did not substantiate his charges of bias and prejudice and he did not document the errors alleged. The Board will, therefore, affirm the Office's September 29, 2006 decision denying appellant's request.

CONCLUSION

The Board finds that the Office properly denied appellant's September 22, 2006 request for reconsideration.

⁵ Docket No. 94-544 (issued July 19, 1995); Docket No. 99-739 (issued March 31, 1999) (order dismissing appeal); Docket No. 01-798 (issued October 9, 2001); Docket No. 03-887 (issued June 5, 2003); Docket No. 04-64 (issued August 9, 2005); Docket No. 06-875 (issued September 8, 2006).

⁶ The Office accepted that appellant sustained a low back strain on July 14, 1988 when he tripped over a box and fell backward at work. Appellant claimed a recurrence of disability on July 3, 1989. On September 20, 1989 the Office asked appellant to have his doctor explain how his current herniated disc was related to the July 14, 1988 injury, as earlier electrodiagnostic studies did not show a herniated disc. When appellant did not respond, the Office denied his claim on January 12, 1990. Appellant requested reconsideration on November 29, 1990. The Office reviewed the medical evidence he submitted and on March 15, 1991 denied modification of its prior decision.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board